

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08-cr-00181-RJC

USA,)	
)	
Plaintiff,)	<u>ORDER</u>
)	
vs.)	
)	
DEMETRIUS ANTONIO STARKS,)	
Defendant.)	


THIS MATTER is before the Court upon motion of the defendant, pro se, requesting relief under United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). (Doc. No. 27).

The defendant believes his criminal history category under the United States Sentencing Guidelines should be reduced from III to II because he only has one felony on his record. (Id. at 1). However, determination of the defendant's criminal history category was not based on felony status, but rather the fact of his prior convictions, under USSG §4A1.1(c). (Doc. No. 21: Presentence Report at ¶¶ 41, 43). Therefore, the Simmons decision does not affect the defendant's sentence.

IT IS, THEREFORE, ORDERED that the defendant's motion (Doc. No. 27) is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, the United States Attorney.

Signed: October 7, 2013


Robert J. Conrad, Jr.
United States District Judge

